O/E.S.T. P/53

K

1953.

File No. 7/53

P 13E

Legal Deptt.

G BRANCH

Subject:— Opinions under the Essential Supply Temporary Powers Act 1946

O/E.S.T. P/53

File No. 7/53

Gen. 194 a.

C O N T E N T S.

Legal Department File No. O.E.S.T.P./53.

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KAN/22-8.
5 c.

Office of the R.L.A.

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The S.T.C's office was informed by a person on 24-4-1952 that Shri Ratanlal Premchand holding 'B' class licence No. B/2040 under the Bombay Cotton Cloth Dealers Licensing Order, 1951 was non existent and fictitious. Attempts were made to contact the licensee but he was not traceable. Therefore his licence was cancelled on 8-5-1952. An application for a 'D' class licence in form I appended to the Bombay Cotton Cloth Dealers Licensing Order, 1951 was received by the S.T.C's office on 3-6-1952 in the name of Ratanlal Premchand along with licence fee of Rs.50/-. One Shri Kishindas Bhagwandas came to receive the licence in the name of Ratanlal Premchand on 19-6-1952. He stated in his statement before the A.T.C., Bombay that he was an employee in the firm of M/s. Ratanlal Premchand. The application for licence was suspected by the S.T.C.'s office to have been made by Shri Kishindas in a bogus name. He was therefore handed over to the police. The police put him under arrest and subsequently released him on a bail of Rs.500/-. In his statement dated 23-6-1952 before the police Shri Kishindas stated that it was he who had applied for a licence for the 1st time in the name of Ratanlal Premchand by

giving .....

giving bogus place of business. In his subsequent statement dated 20-11-52 before the police he stated that he had gone to the S.T.C's office for making inquiries about the licence at the instance of Shri Ratanlal Premchand who had had himself made the application and paid the fee. The clerk in the S.T.C's office to whom the licence fee was paid is not able to identify as to who had made the payment to him. The Superintendent of that office has stated that Shri Kishindas had made inquiries with her whether the licence in the name of Ratanlal Premchand was ready. The receipt passed by the S.T.C's office for Rs.50/- and the memo. calling upon Shri Ratanlal Premchand to take delivery of the licence on 19-6-1952, have been produced by Shri Kishindas before the police. Two specimen signatures of Shri Kishandas in the name of Ratanlal Premchand have been obtained which appear to be identical to the signature appearing on the application for licence. The P.P., Shri Sahani states that as the place of business shown in the application is false, the applicant is liable to be prosecuted under section 10 of the Essential Supplies (Temporary Powers) Act, 1946. The P.P. however thinks that a successful prosecution under the said section is not feasible against Shri Kishindas in this case in absence of any evidence to establish the fact that

he signed the application for licence. The S.T.C's office has now forwarded these papers to this office for R.L.A's advice whether it would be worthwhile to call for an experts' opinion on the handwriting of Shri Kishindas and to prosecute him under section 10 of the E.S.(T.P.)Act, 1946 if in the opinion of the handwriting expert, the application for licence has been signed by him.

x x x x

Id/- .....
30/12/52.

A.S.(G)

x x x x

Id/- S.R.Patnis
3/1

D.S.(Cr.)

x x x x

Sd/- .....
5-1-53.

KAN/22-3
4 c.

Office of the R.L.A.

A case under section 10 of the Essential Supplies (Temporary Powers) Act, 1946 can be made out if the handwriting expert's evidence is in favour of the prosecution case. That evidence should be obtained first. The signature on the previous application for a 'B' class licence may also be got verified.

Id/- P.M. Lad
7/1

Remembrancer of Legal Affairs.

U.R. to S/T.C. No. G-20, dated the 7th January 1953.

KAN/22-8.
4 c.

Legal Department.

Sub-section (3) of section 3 of the Essential Supplies (Temporary Powers) Act, 1946 interalia provides that an order made under sub-section (1) shall confer powers and impose duties upon the State Government or officers and authorities of State Government and may contain directions to any State Government or to officers and authorities thereof as to the exercise of any such powers or the discharge of any such duties. Although the Bombay Foodgrains Levy Order, 1949 is since cancelled, it is clear from the papers that village Talatis are required to carry out numerous duties in connection with the various foodgrains control orders issued by this Government under the Essential Supplies (Temporary Powers) Act in the rural areas and that village Talatis and other revenue officers are considered more suitable for this work than raw recruits in view of their intimate knowledge of land records and experience of revenue work. In view of the previsions of section 3 (3) of the Essential Supplies (Temporary Powers) Act the imposition of duties and conferment of powers on these revenue officers in connection with any order made under section 3 would be in order and the object in view can be achieved by an order made under the said section. In that case it would not be necessary to amend the Essential Supplies (Temporary Powers) Act for that purpose.

Id/- J.R. Dhurandhar
25/1
Additional Secretary to Government.

KAN/22-3.
4 e.

U.R. to C.S.D. No. G-57, dated the 24th January 1953.

Office of the R.L.A.

The question whether an appeal should be filed against the acquittal of Shri Raja the Managing Director of the Phoenix Mills Limited, was considered but on the recommendation of the R.L.A. the then H. (C.S.) decided that no appeal should be filed as proper evidence was not led by the prosecution. The Home Department was also asked to deal strongly with the officers who were responsible for this carelessness.

As regards the liability of the Directors, the provisions of section 9 of the Essential Supplies (Temporary Powers) Act are sufficient for the purpose. This provision is based on the Defence (General) Regulations, Regulation 91 enacted in England and it shifts the onus on the Directors to prove their innocence. The law does not require improvement in this respect but what is required is the proper handling of prosecutions.

Id/- P.L. Lal
27/1

Remembrancer of Legal Affairs.

U.R. to S.T.C., No. G-60, dated the 27th January 1953.

HAU/22-3.
4 c.

Office of the R.F.A.

The draft Letter to the Government of India at p. 35 ante does not need any alteration in the light of the judgment passed by the High Court in Criminal Revision Application No. 642 of 1952 (copy enclosed). The repugnancy between the Essential Supplies (Temporary Powers) Act, 1946 and the Bombay Essential Supplies (Temporary Powers) and Essential Commodities and Cattle (Control) (Enactment of Penalties) Act, 1947 was removed by the amendment of section 7 of the Essential Supplies (Temporary Powers) Act in 1950 by which the offence of hoarding foodgrains above a particular limit was made punishable with 7 years.

Id/- P.N. Lal
20/3

Remembrancer of Legal Affairs.

U.R. to C.S.D./ No. G- 189, dated the 28th March 1953.

KAU/22-8.
4 c.

Office of the R.D.A.

By Civil Supplies Department Order No. 410/II, dated 1st August 1940 Revenue and other officers have been empowered inter alia to enter upon and search any premises, vessels, vehicles or aircraft in the areas of their respective district and seize any articles in respect of which they have reason to believe that a contravention of the various Civil Supplies Department Orders mentioned in Schedule II to the order has been committed. A requestion has now been raised by the District Magistrate, Nasik whether the Revenue Officers can cause buses and other vehicles to stop for the purpose of checking whether any foodgrains are being smuggled; and whether any action can foodgrains was being taken against the drivers concerned for failure to stop the vehicles.

2. Civil Supplies Department Order No. 410/II, dated 1st August 1940 appears to have been made under clause (j) of sub-section (2) of section 3 of the Essential Supplies (Temporary Powers) Act, 1946. Under that clause an order could be made for any incidential and supplementary matters, including in particular the entering & and search of premises, vehicles, vessels and aircraft etc. The conjunction of 'vehicles, vessels and aircraft' with 'premises' would suggest that only stationary vessels or vehicles are included in the scope of the order. Though according to the general principle of interpretation if a power has been granted everything indispensable to its exercise is impliedly granted, that principle

would not be applicable here, for the power to stop vehicles is of a quite different nature which is required to be conferred specifically; it is not ancillary. The ancillary power which can be deemed to have been impliedly granted under the Civil Supplie Department order in question would be, for example, to force open the doors of the premises, etc. for the purpose of effecting entry. Power to stop vehicles suspected of carrying smuggled foodgrains will have to be specifically granted. It appears therefore that the Revenue and other Officers cannot cause the runnin buses and vehicles to stop; the other question whether action can be taken against the dirver would not arise. The view expressed by the Director of Civil Supplies appears to be correct.

Sd/- J.R. Muruganthan
13/5

Remembrancer of Legal Affairs.

U.R. to C.S.D. No.C.278, dated the 13th May 1953.

KAN/22-3.
4 c.

L.D.R.I. No. C-407, dt. 12-5-53.

Submitted.

2. Please see the note of the Controller of Rationing's office on pages 5-6 ante.

3. The facts of this case are as follows:-

Clauses 6,12, 15, 20, 21, 22, 23, 33 and 34 of the Ahmedabad Rationing Regulation, 1946 have been amended by the Government Order, Civil Supplies Department, No. C.R.169 U.D.R. XV, dated 20-12-1952 (Scrutinized under his office U.R. No. C-508, dated 7-10-1952) so as to empower the D.S., Ahmedabad to issue ordinary orders instead of notified orders for validating coupons on a ration document and specifying maximum proportion of any rationed articles etc. The D.S., Ahmedabad has raised the following point in connection with the above amendments:-

"The Ahmedabad Rationing Regulation, 1946 has been issued under clause 12 of the Bombay Rationing Order, 1943. The B.R.O. is deemed to have been issued under section 3 of the Essential Supplies (Temporary Powers) Act, 1946 Section 3(1A) of the E.S.(T.P.) Act requires all orders of a general nature to be notified in the Official Gazette. In view of this, the above amendments carried out in the Ahmedabad Rationing Regulations are ultra vires.

The C. of R's office has requested the R.L.A. to give his opinion on the point.

Id/- .....
13-6-53.

A.D.(G)

Id/- S.R. Pohlia
26/6

EAM/22-8.
4 c.

Legal Department.

The view taken by the District Magistrate, Ahmedabad in his letter at page 1 ante is not correct on the following two grounds:-

(1) The provisions of sub-section (1A) of section 3 of the Essential Supplies (Temporary Powers) Act, 1946 apply only to orders made under sub-section (1) of section 3 of the Act. The orders to be issued by the District Magistrate under the various clauses of the Ahmedabad Rationing Regulation are not orders issued directly under section 3(1) of the Essential Supplies (Temporary Powers) Act, 1946 and there is no statutory provision that such orders should be notified in the Official Gazette.

(2) The provisions of section 3 are applicable to orders to be made by authorities specified therein i.e. the Central Government or authorities or officers specified in section 4 of the Essential Supplies (Temporary Powers) Act, 1946 to whom the power to make orders had been delegated by a notification thereunder. The powers to make orders in respect of foodstuffs have been delegated to the Government of Bombay. The District Magistrate, Ahmedabad, is not competent to make any order under section 3. He has been authorised to exercises certain executive functions required to be performed under the Ahmedabad Rationing Regulation. The various provisions of the Ahmedabad Rationing Regulation, as amended, provide for making of orders by the District Magistrate without publication in the Gazette.

However as the orders to be issued by the District Magistrate under the Ahmedabad Rationing Regulation are of a

general nature affecting a class of persons, it would be desirable to inform the public about these orders by local publicity.

Id/- B.P. Dalal
9/7

Additional Deputy Secretary to Government.

U.R. to C. of R., No. G.401, dated the 9th July 1953.

KAN/22.8.
4 c.